



# ఆంధ్రప్రదేశ్ రాజపత్రము

## THE ANDHRA PRADESH GAZETTE PUBLISHED BY AUTHORITY

W.No.39

AMARAVATI, WEDNESDAY, OCTOBER 4, 2023

G.746

### PART II - MISCELLANEOUS NOTIFICATIONS OF INTEREST TO THE PUBLIC

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### NOTIFICATIONS BY HEADS OF DEPARTMENTS Etc.,

#### ADDITIONAL SENIOR CIVIL JUDGE'S COURT TENALI.

Friday, this the 28<sup>th</sup> day of July, 2023

#### I.P.No. 01 of 2018

Between:

Yarlagadda Rama Devi W/o.Late Babu Rao, Hindu, aged about 61 years, Properties, r/o.D.No.1-35-22, Malladivari Street, Nazerpet, Tenali, Guntur District.

...Petitioner/Creditor

And

1. Bodapati Prakasa Kumari W/o.Raju, Christian, aged about 45 years, House wife, R/o.D.No.8-28-13/E, Kattevaram Road, Balajiraopet, Tenali, Guntur District.

2. Thinnaluri Suresh, S/o.Late Venkateswarlu, Hindu, aged about 32 years, R/o.D.No.8-108, Angalakuduru village, Tenali mandal, Guntur District.

...Respondents

This petition is coming on 21.07.2023 for final hearing before me in the presence of Smt.A.Vijaya Kumari, Advocate for petitioner/creditor and Sri D.Srinivas, Advocate for respondent No.1, Sri Sk.Kareemoon, Advocate for respondent No.2 and having stood over for consideration till this day, this court delivered the following:

**// ORDER //**

1. This petition is filed U/Sec.6 and 9 of Provincial Insolvency Act by the petitioner to declare and adjudge the respondent No.1 as an insolvent; to direct the official receiver to apply the provisions under Section 53 and 54 of PI Act and to set aside the alienation of the in favour of the second respondent dated 08.09.2017, costs and for other reliefs.

2. The case of the petitioner in a nutshell is as follows:

The first respondent borrowed an amount of Rs.3,56,000/- from her on 16.06.2015 for her family expenses and executed a promissory note in favour of the petitioner by agreeing to repay the same with interest @ 24% per annum. Subsequently, the first respondent failed to pay the debt amount inspite of her repeated demands. Recently, she came to know that the first respondent sold away her only property which is described in the petition schedule to the second respondent to register sale deed dated 08.09.2017 which was registered in the office of Sub-Registrar, Tenali West vide Doc.No.2160/2017. In fact, the first respondent has no necessity to alienate the said property but she sold away the same with a malafide intention to defeat the rights of the petitioner. In the event of the decree passed in her favour by the concerned Civil Court. The Second respondent also fully aware about the promissory note debt to be paid by the first petitioner and he entered into said transaction. The first respondent has no other properties except the petition schedule property. Hence, he committed an act of insolvency. The petitioner got issued a legal notice to her on 30.11.2017 and the acknowledgment was not yet received. Therefore, the petitioner is constrained to file this petition.

3. The respondent No.1 filed her counter denied the material allegations in the petition are all false and had inter-alia contended in the following manner :

She never borrowed any amounts from the petitioner nor executed any promissory note in her favour. The promissory note is a rank forged one and not supported by consideration. She received the notice but she could not issue any reply as she was suffering with high fever during the said period and in the meanwhile she received the notice in this petition. The schedule

property is her self acquired property and the same was sold away for the second respondent for valuable consideration and for utilization of her family. There is no collusion in between the first and second respondent and this petition is also not maintainable and liable for dismissal.

4. The second respondent also filed the counter in the same lines as that of the first respondent besides that he pleaded in the following manner :

The present petition is barred by limitation and he is the bonafide purchaser after payment of entire sale consideration through RTGS dated 08.09.2017, from Bank of Baroda, Angalakuduru branch and amount of Rs.7,07,000/- was transferred to the first respondent and the said sale deed was executed only after receipt of said consideration by the first respondent. He prayed for the dismissal of this petition.

5. The petitioner was examined as P.W1 and she got marked Ex.P1 is certified copy of promissory note executed by the first respondent in favour of PW1 dated 16.06.2015, Ex.P2 is certified copy of registered sale deed executed by Siddam Anjaneyulu in favour of the 1<sup>st</sup> respondent (Doc.No.1159/2013) dated 20.02.2013, Ex.P3 is certified copy of registered sale deed executed by first respondent in favour of 2<sup>nd</sup> respondent (Doc.No.2160/2017) dated 04.09.2017, Ex.P4 is office copy of registered legal notice got issued by the petitioner to the 1<sup>st</sup> respondent dated 30.11.2017, Ex.P5 is postal acknowledgement dated 30.11.2017., have been admitted through her. The petitioner also got examined the third party who was present at the time of demand of the debt amount and about the possession of the first respondent over the petition schedule property. The scribe of the promissory note was examined as PW3.

On behalf of the respondent No.2, he was examined as RW1 and he got marked Ex.R1 is account copy issued by the Bank of Baroda, Angalakuduru branch related to the payment by RTGS dated 08.09.2017, Ex.R2 is photograph showing the back view and front view of the building along with CD, Ex.R3 is demand notice issued by APSPDCL,

Angalakuduru from June, 2018 to July, 2018 S.C.No.1211651004313, Ex.R4 is demand notice issued by APSPDCL, Angalakuduru from January, 2019 to February, 2019 S.C.No.1211651004313, Ex.R5 is demand notice issued by APSPDCL, Angalakuduru from September, 2018 to October, 2018 S.C.No.1211651004313, Ex.R6 is demand notice issued by APSPDCL, Angalakuduru from February, 2018 to March, 2018 S.C.No.1211651004313, Ex.R7 is certified copy of the Doc.No.1256/1999 sale deed executed by Gampala Pullaiah S/o.Kotaiah, in favour of Thinnaluri Venkateswarlu, Dated 11.05.1999 (father of R2), Ex.R8 is certified copy of the Doc.No.1573/2015 settlement deed executed by Thinnaluri Anasuyamma in favour of Tinnaluri Suresh (R2) dated 13.05.2015, Ex.R9 is certified copy of the Doc.No.981/2018 sale deed executed by Thinnaluri Suresh in favour of Nannapaneni Srinivasa Rao dated 29.03.2018, have been admitted through him. He got examined one of the attestors for the sale deed executed in favour of the second respondent by the first respondent as RW2 in chief examination and subsequently his evidence was eschewed as per endorsement as his chief executers.

7. The petitioner deposed as PW1 about the execution of the promissory note by the first respondent and execution of the sale deed by the first respondent in favour of second respondent to avoid the payment of debt. PW2 who is the third party also deposed about his presence at the time of demand of repayment of debt and possession of the property by the first respondent even after she executed the sale deed infavour of second respondent. PW3 who is the scribe of the promissory note also deposed about the execution of the promissory note and passage of the consideration therein. The second respondent as RW1 deposed about purchase of the property after payment of consideration and claimed that he is a bonafide purchaser for valuation consideration.

6. Heard the petitioner. No representation for the respondent 1 and 2 and as such, it was treated as heard.

7. Now the points arises for determination of pleadings and evidence are;

- (1) Whether the respondent No. 1 committed act of Insolvency, if so, she is liable to be adjudicated as an insolvents?
- (2) Whether this Court can direct the official receiver to apply under Section 53 and 54 of Provincial Insolvency Act after the 1<sup>st</sup> respondent adjudicated as an insolvent and set aside the alienation of the petition schedule property in favour of 2<sup>nd</sup> respondent dated 08.09.2017 (4.09.2017) (Doc.No.2160/2017, SRO Tenali West) ? And
- (3) To what relief?

8. **Point No.2 : Whether this Court can direct the official receiver to apply under Section 53 and 54 of Provincial Insolvency Act after the 1<sup>st</sup> respondent adjudicated as an insolvent and set aside the alienation of the petition schedule property in favour of 2<sup>nd</sup> respondent dated 08.09.2017 (Doc.No.2160/2017, SRO Tenali West) ?**

The case of the petitioner is that the respondent No.1 created a sham and nominal sale deed dated 04.09.2017 in favour of 2<sup>nd</sup> respondent to evade the payment of debt contracted by respondent No.1. In fact, it is mentioned in petition that the date of sale deed as 08.09.2017 but as per Ex.P3 it was executed on 04.09.2017. Per contra, the contention of the respondents is that the second respondent is bonafide purchaser for valuable consideration and the first respondent never executed the promissory note in favour of the petitioner and no consideration was passed to that effect.

9. Before dwelling upon into the facts of this case, this Court has to examine whether the insolvency Court can annual the sale transaction simultaneously or can give such directions to the official receiver along with the adjudication of the insolvency. To decide the said aspect, it is apposite to refer the provisions of Insolvency Act, more particular the Section 53,54 and 54-A of Provisional Insolvency Act.

10. Section 53 of said Act envisages that any voluntarily transfer made by debtor can be avoided if the transferor is adjudged as insolvent. Section 54 of the said Act provides for deeming fraudulent transfer made by the insolvent as a void and annulment by the Court except the transactions entered in good faith and for valuable consideration. A fraudulent transfer under Sec.53 of the Act and fraudulent preference under Sec.54 of the Act are void against the receiver and the transaction shall be annulled on the petition filed within the specify time and as per the procedure contemplated under Sec.54 -A of the Act and the same has to be presented by the receiver.

11. In view of the principles enshrined in the Section 53 and 54 of the said Act, adjudging the debtor as a insolvent is a pre-condition to annul the any transaction of transfer. But herein this case, the petition was filed by the creditors by seeking two reliefs under Sec.9 for adjudication of respondents 1 as an insolvent so also relief to give direction to take proceedings for annulment of the sale transaction which is against the procedure contemplated under Sec.53 to 54-A of the said Act as held by the Hon'ble High Court of A.P in the case of Dara Mohan Muralidhar and others V/s. B.Nirmala Devi and others reported in MANU/AP/1098 /2015 wherein at para 29 the Hon'ble High Court of A.P relied upon the Judgment in case of Tadikamall Venkata Ramana Kishore and another and held at para 29 in the following manner;

**29. In the instant case, by the date of filing the petition, seeking annulment under Section 53 or 54 of the Act, the petitioner was not even adjudged as insolvent. So, the first condition was not satisfied. The petitioner did not approach the Official Receiver and proved his debt as contemplated under Part-III of the Act and complied Section 54-A of the Act. Thereby, the order annulling the sale transaction covered by sale deeds dated 10.03.2004 vide document Nos. 2605 of 2004 and 2606 of 2004 passed by the trial Court as confirmed by the appellate Court, is erroneous ex facie and contrary to provisions of Act. Hence, the orders of the trial Court**

**and the appellate Court to the extent of annulling the sale deeds dated 10.03.2004 vide document Nos. 2605 of 2004 and 2606 of 2004, is illegal and the same is liable to be set aside. However, the petitioner is at liberty to move an application after compliance of Sections 45 to 50 and 54-A of the Act to annul the transfer of immovable property under Sections 53, 54 or 4 of the Act."**

12. In view of the decision of the Hon'ble High Court of A.P and in the light of the above discussion, the proof of debt as contemplated under Sec.45 to 50 and 54-A of the Act does not arise as it is exclusive domain of the receiver by following the procedure and there is a separate procedure is contemplated to annul the sale transaction. Therefore, this Court cannot consider the evidence let in by the petitioner and respondent and documentary evidence submitted by them with regard to the capability of second respondent to purchase the property in Ex.R7 to R9 coupled with the transfer of the amounts for purchase of the property and about the collusion between respondent No.1 and 2 in bringing the sale deed for the petition schedule property as pleaded by the petitioner, cannot be considered in this petition as it is to be decided by the Receiver. However, the present petition is filed for the two reliefs simultaneously and as such this Court cannot grant such a relief to give direction to the Official Receiver for annulment of sale transaction simultaneously with declaration of insolvency as there is a separate procedure prescribed under the Law. Accordingly, this point is answered.

**13. Point No.1: Whether the respondent No. 1 committed act of Insolvency, if so, they are liable to be adjudicated as an insolvents?**

The case of the petitioner is that the respondent 1 borrowed an amount of Rs.3.00.000/- from the petitioner and executed a demand promissory note in her favour by agreeing to repay the same with 24% p.a., but she avoided to repay the said amount and to defraud her claim, the first respondent executed a nominal sale deed in favour of the second respondent. On the other hand, the

respondent No.3 claims that he is the bona fide purchaser. This petition is filed under Sec.9 of Insolvency Act which reads as follows;

### **9. Conditions on which creditor may petition.**

(1) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

(a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and

(b) the debt is a liquidated sum payable either immediately or at some certain future time, and

(c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition: 1[Provided that where the said period of three months referred to in clause (c) expires on a day when the Court is closed, the insolvency petition may be presented on the day on which the Court re-opens.]

14. In view of the above said provision of law, the petitioner has to establish that the respondent No.1 have to pay the said liquidated amount of Rs.500/- as a debt. The petitioner as a P.W.1 categorically deposed about the debt contacted by the respondent No.1 and she submitted certified copy of Promissory note dated 16.06.2015 in Ex.P1, Ex.P4 office copy of registered legal notice and Ex.P5 are the acknowledgement for the said notice. The respondent elicited from the evidence of PW1 that she is house wife and no source of income. She further admits that she did not file any documentary evidence to show that she had withdrawn the amount of Rs.3,00,000/- from the bank on or before 16.06.2017. It is also suggested to her that small cause case No.2 of 2016 on the file of Prl.Junior Civil Judge Court, Tebnali filed against her for recovery of amount of Rs.4000/- and she denied the said suggestion as false. The above said suggestions and admissions were elicited to impress upon the Court that she has no capacity to lend the said amount. In further lines of cross examination, the respondent No.1 elicited from evidence of PW1 that she filed CC.482/2018 against the K.Ambedkar basing on a cheque. It is also suggested her that she filed a suit in O.S.125/2013 against Vengalasetti Narasimha Rao and others on the file of Prl.Senior Civil Judge Court, Tenali and that was denied by her as false. The above said suggestions itself shows that she is capable enough to grant loan. Except the above said suggestions and admissions nothing was elicited to show that PW1 has no capacity to lend

the amount. The respondent No.2 got elicited from the evidence of PW1 that she does not know the native place of respondent No.1, but she clarified that she is tenant under him. In support of her contention, the third party namely Sambasiva Rao was examined and he deposed about the transaction in between the petitioner and respondent No.1. but he admitted in his cross examination that he was not present at the time of transaction and present address of respondent No.1. he further admits that he does not know the avocation of respondent No.1 and details of petition schedule property. Therefore, his evidence is no way helpful to the case of the petitioner.

15. However, the petitioner got examined scribe of promissory note namely Gopi Krishna as PW3 and he deposed about the execution of the promissory note and passage of consideration thereon. He stated that he admitted in cross examination that he does not know the father's name of Suresh. He stated in his cross examination that he had acquaintance with respondent No.1 through her husband by name Raju since six years. The respondent No.1 did not choose to enter into witness box atleast to deny her signature in the promissory note though she pleaded that it is a rank forged one. Mere filing of the counter, at best help this Court to arrive the conclusion about the contentious issues between the parties and the party has to enter into witness box to depose about her case. In absence of her evidence, this Court has to take an adverse inference that the defence set up by her about the forgery and other aspects with regard to the transaction under Ex.P1 are not correct. Moreover, the RW1 who is the respondent No.2 categorically admitted that the petitioner obtained decree in O.S.199/2018 on the file of the learned Principal Senior Civil Judge Court, Tenali against the first respondent on 24.07.2019. Therefore, this Court is bound to believe the version of the petitioner that the respondent No.1 borrowed an amount of Rs.3,00,000/- and executed promissory note in her favour in Ex.P1.

16. Therefore, there is no inch of doubt to say that the petitioner established the debt contracted by the respondent No.1 and 2 which is very much prior to sale transaction dated 04.09.2017. Indeed mere proof of existence of debt is sufficient before the Insolvency Act as part-III of the Act in Secs.45 to 50 laid down the procedure for proof of debt before the Receiver and it would arises only after adjudication of the debtor as an Insolvent. It is also an admitted fact

this petition was filed on 01.12.2017 whereas the sale transaction in question was taken place on 04.09.2017 and as such the mandatory requirement under Sec.9 (a to c) are also complied.

17. In the light of the above discussion, the proof of debt contacted from the petitioner by the respondents No.1, transfer of the property in favour of the 2<sup>nd</sup> respondent without payment of said debt clearly shows his intention to transfer the property to defeat his creditors. Even assuming for the moment that the petitioner fails to establish the intention of the respondent No.1 to defeat his creditors, the transfer of the entire property in preference to some of the creditors as referred in the sale deed in Ex.P3 without payment of amounts to the petitioner also amounts to act of Insolvency as laid down under 6 1(b) of the Act. Therefore, viewed from any angle the petitioner establish the act of the insolvency on the part of the first respondent. Accordingly, this point is answered in favour of the petitioner.

**18. Point No.3: To what relief?**

In view of findings of this Court point No.1 and 2, the first respondent is the adjudicated as insolvent. However, the relief of setting aside the alienation of the petition schedule property in favour of 2<sup>nd</sup> respondent by the 1<sup>st</sup> respondent vide Doc.No.2160/2017, SRO Tenali West dated 08.09.2017 annulment of sale transaction cannot be granted by this Court. However, in the above said decision of Hon'ble High Court AP stated supra in case of Dara Muralidhar, it is held that the petitioner is at liberty to move an application after compliance of Sec.45 to 50 and 54-A of Act to annul the transfer of immovable property under Sec.53, 54 or 4 of the Act while setting aside orders passed for annulment of sale deed. In view of the above said circumstances, this Court is also inclined to follow the above said direction as held by the Hon'ble High Court of A.P as the first respondent was declared as insolvent, without dismissing the petition for the said relief of annulment of sale as this Court has not decided the above said aspect on merits.

19. In the result, this petition is partly allowed by adjudicating the first respondent as an Insolvent. The period of discharge is one year from the date of this Order. The petitioner is at liberty to move an application after compliance of Sec.45 to 50 and 54-A of the Provincial Insolvency Act to annul the transfer

of immovable property under Sec.53 and 54 or 4 of the Said Act. The petition schedule property is vested with the receiver. Office is directed to communicate a copy of this order to the Official Receiver. Office is directed to communicate a copy of this order to the District Collector, Guntur for publication in Official Gazette as per Section 30 of Provincial Insolvency Act, 1920.

(Typed to my dictation to the Personal Assistant, corrected and pronounced by me in the open Court, this the 28<sup>th</sup> day of July, 2023.)

**MARPU SREEDHAR,**  
*Addl Senior Civil Judge,*  
*Tenali.*

APPENDIX OF EVIDENCE  
WITNESSES EXAMINED

For Petitioner:

P.W1: Yarlagadda Rama Devi  
P.W2 : Yadlapalli Sambasiva Rao  
P.W3 : Uppugunduru Gopi Krishna

For Respondents:

RW1 : Thinnaluri Suresh  
RW2 : Mandava Venkateswara Rao

EXHIBITS MARKED

For Petitioner:

Ex.P1 is certified copy of promissory note executed by the first respondent in favour of PW1 dated 16.06.2015.

Ex.P2 is certified copy of registered sale deed executed by Siddam Anjaneyulu in favour of the 1<sup>st</sup> respondent (Doc.No.1159/2013) dated 20.02.2013.

Ex.P3 is certified copy of registered sale deed executed by first respondent in favour of 2<sup>nd</sup> respondent (Doc.No.2160/2017) dated 04.09.2017.

Ex.P4 is office copy of registered legal notice got issued by PW1 to the 1<sup>st</sup> respondent dated 30.11.2017.

Ex.P5 is postal acknowledgement dated 30.11.2017.

For Respondents:

Ex.R1 is account copy issued by the Bank of Baroda, Angalakuduru branch related to the payment by RTGS dated 08.09.2017.

Ex.R2 is photograph showing the back view and front view of the building along with CD.

Ex.R3 is demand notice issued by APSPDCL, Angalakuduru from June, 2018 to July, 2018 S.C.No.1211651004313.

Ex.R4 is demand notice issued by APSPDCL, Angalakuduru from January, 2019 to February, 2019 S.C.No.1211651004313.

Ex.R5 is demand notice issued by APSPDCL, Angalakuduru from September, 2018 to October, 2018 S.C.No.1211651004313.

Ex.R6 is demand notice issued by APSPDCL, Angalakuduru from February, 2018 to March, 2018 S.C.No.1211651004313.

Ex.R7 is certified copy of the Doc.No.1256/1999 sale deed executed by Gampala Pullaiah S/o.Kotaiah, in favour of Thinnaluri Venkateswarlu, Dated 11.05.1999 (father of R2).

Ex.R8 is certified copy of the Doc.No.1573/2015 settlement deed executed by Thinnaluri Anasuyamma in favour of Tinnaluri Suresh (R2) dated 13.05.2015.

Ex.R9 is certified copy of the Doc.No.981/2018 sale deed executed by Thinnaluri Suresh in favour of Nannapaneni Srinivasa Rao dated 29.03.2018.

**MARPU SREEDHAR,**  
*Addl Senior Civil Judge,*  
*Tenali.*

*[Dis.No.601.]*

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